

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

DARRYL ORRIN BAKER,

Plaintiff,

v.

UNITED STATES OF AMERICA, et al.,

Defendants.

Civil Action No. 05-147 Erie

MEMORANDUM ORDER

This civil rights action was received by the Clerk of Court on May 16, 2005, and was referred to United States Magistrate Judge Susan Paradise Baxter for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

The Magistrate Judge's Report and Recommendation [Doc. No. 44], filed on October 26, 2006, recommended that Defendants' motion to dismiss or for summary judgment [Doc. No. 40] be granted in part and dismissed without prejudice in part.

Specifically, the Magistrate Judge recommended that:

1. The motion to dismiss as to the retaliation claim should be granted as this Court lacks subject matter jurisdiction.
2. The motion to dismiss should be granted as to Defendants FCI-McKean, Warden, Officer Wesemen, and the Medical Department as they are improper parties under the FTCA.
3. The motion to dismiss should be granted as to the failure to protect claim as this Court lacks subject matter jurisdiction over it under the discretionary function exception to the FTCA.
4. The motion for summary judgment as to the medical negligence claim should be dismissed without prejudice.
5. The motion to dismiss should be granted as to the Plaintiff's request for punitive damages and Plaintiff's demand for jury trial.

The parties were allowed ten (10) days from the date of service to file objections. Service was made on Plaintiff by certified mail and on Defendants. Plaintiff filed

objections on November 16, 2006 [Doc. No. 45]. After de novo review of the motion and documents in the case, together with the Report and Recommendation and objections thereto, the following order is entered:

AND NOW, this 14th day of December, 2006;

IT IS HEREBY ORDERED that:

1. The motion to dismiss as to the retaliation claim is GRANTED as this Court lacks subject matter jurisdiction.
2. The motion to dismiss is GRANTED as to Defendants FCI-McKean, Warden, Officer Wesemen, and the Medical Department as they are improper parties under the FTCA.
3. The motion to dismiss is GRANTED as to the failure to protect claim as this Court lacks subject matter jurisdiction over it under the discretionary function exception to the FTCA.
4. The motion for summary judgment as to the medical negligence claim is DISMISSED without prejudice.
5. The motion to dismiss is GRANTED as to the Plaintiff's request for punitive damages and Plaintiff's demand for jury trial.

The Report and Recommendation [Doc. No. 44] of Magistrate Judge Baxter, filed on October 26, 2006, is adopted as the opinion of the Court.

s/ Sean J. McLaughlin
United States District Judge

cm: All parties of record
Susan Paradise Baxter, U.S. Magistrate Judge